IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8918 of 1999
With
SPECIAL CIVIL APPLICATION No. 8927 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PUNAMBHAI DAHYABHAI PATEL & 22 - Petitioner(s)
Versus
NANABHAI PRABHUDAS BHOI & 4 - Respondent(s)

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Appearance :

MR BG PATEL FOR MR RA MISHRA for Petitioners in SCA No.8918/99.
MR TRILOK PATEL FOR JITENDRA PATEL for petitioners in SCA 8927/99

MR MR MA KHARADI for Respondent No.1 in both petitions,
MS NISHA PARIKH AGP FOR State authorities in both petitions.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 05/04/2007

ORAL JUDGMENT

1. Mr.B.G. Patel, learned counsel under the authority of Mr.R.A. Mishra, learned counsel for the petitioners in

Special Civil Application No.8918 of 1999, Mr.Trilok Patel, learned counsel under the authority of Mr.Jitendra M.Patel, learned counsel for the petitioner in Special Civil Application No.8927 of 1999. Mr.M.A. Kharadi, learned counsel for the respondent No.1 in each of the petition and Ms.Nisha Parikh, learned Assistant Government Pleader for the respondent authorities – State in each of the petition.

2. Short facts necessary for disposal of the present petition are that the respondent No.1 was holder of and owned Survey No.154/1 admeasuring 9 Acres and 19 Gunthas land of Village Jafrabad, Taluka Godhra, District Panchmahals. He entered into an agreement dtd.20/9/1982 to sell the entire land in favour of proposed Yogeshvarnagar Cooperative Housing Society for a consideration of Rs.1,96,999=00 and received a sum of Rs.21,000=00 as earnest money. It appears that on 20/9/1982, the respondent No.1 – Nanabhai Prabhudas Bhoi executed a Power of Attorney on Stamp Paper of Rs.50=00 in favour of Ranchhodbhai Punabhai Raval (petitioner in Special Civil Application No.8927 of 1999 in respect to the above referred land. Thereafter, the said Ranchhodbhai Punabhai Raval started converting land

admeasuring 4 Acres and 1 Guntha for non-agricultural purchase under order dtd.3/3/1983 passed by the Competent Authority. It is also the case of each of the petitioner that in addition to the power of attorney dtd.20/9/1982, said Nanabhai Prabhudas Bhoi executed yet another power of attorney dtd.19/4/1983 in favour of respondent No.2 giving him absolute authority to transfer the non-agricultural land.

3. It is the case of each of the petitioner that the respondent No.1 – Nanabhai Prabhudas Bhoi received a sum of Rs.89,686=00 towards total amount of consideration.

4. 4 Acres and 1 Guntha land, which was permitted for non-agricultural purpose, was converted into 59 separate plots, out of which, the respondent No.2 sold 36 plots in favour of certain persons. Respondent No.1 – Nanabhai Prabhudas Bhoi executed a Memorandum of Understanding on 28/3/1988 admitting certain facts and that he had executed power of attorney in favour of Ranchhodbhai Punabhai Raval. The allegation of the petitioners are that the respondent No.1 – Nanabhai Prabhudas Bhoi was trying to wriggle out of the aforesaid transaction dtd.20/9/1982, therefore, he issued notices upon Ranchhodbhai Punabhai Raval on 29/8/1991 and

18/9/1991 stating that he was withdrawing powers conferred upon Ranchhodbhai Punabhai Raval, the said Ranchhodbhai Punabhai Raval accordingly cancelled the power of attorney dtd.20/9/1982. According to the petitioners, latter power of attorney dtd.19/4/1983 was never cancelled by the respondent No.1 - Nanabhai Prabhudas Bhoi and as the power of attorney was irrecoverable power of attorney, Ranchhodbhai Punabhai Raval sold remaining 23 plots in favour of petitioners of Special Civil Application No.8918 of 1999. In relation to transaction relating to plots, Mutation Entry No.2367 dtd.25/8/1992 was made in the revenue records by the competent Mamlatdar and the entry was accordingly certified after considering the objections raised by respondent No.1 – Nanabhai Prabhubhai Bhoi. The respondent No.1 - Nanabhai Prabhudas Bhoi filed RTS Appeal No.29 of 1993 before the Assistant Collector, Godhra even without joining the petitioners of Special Civil Application No.8918 of 1999, as party respondents. The Assistant Collector, by his order dtd.25/3/1994 allowed the appeal filed by the respondent No.1. The said order was challenged by each of the petitioner before the Collector, who was pleased to dismiss both the revisions

on 29/12/1994. Orders passed by the Collector were challenged before the State Government but the State Government, through the Competent Authority, rejected the revision application on 24/7/1999, therefore, the purchasers and the holder of power of attorney are before this Court.

5. Mr.B.G. Patel and Mr.Trilok Patel, learned counsel for the respective petitioner submit that once a sale deed is executed by the holder of the power of attorney and as the revenue entries are for fiscal purposes only, the Deputy Collector was not entitled to interfere in the matter. According to them, if the property had been sold in favour of any party, exercising the powers conferred under the power of attorney, then revenue authorities could not make an inquiry into the question of title. Strong reliance has been placed upon three Single Bench Judgments of this Court in the matter of G.S. Patel Vs. Kanchanbai, reported in 2005(3) GLR 2233, Gandabhai Dalpatbhai Patel Vs. State of Gujarat, reported in 2005 (2) GLR 1370 and in the case of Ratilal Chunilal Solanki and others Vs. Shantilal Chunilal Solanki and others, reported in 1996 (2) GLR 525. It is also submitted by the learned counsel for the petitioners that as power of attorney

dtd.19/4/1983 was never cancelled by the original holder of the land – Ranchhodbhai Punabhai Raval, holder of the power of attorney was entitled to sell the land.

6. Mr.M.A. Kharadi, learned counsel for the original holder - Nanabhai Prabhudas Bhoi submits that once the power of attorney was cancelled and the intention of the holder was to cancel all the authorities, then, Ranchhodbhai Punabhai Raval had no authority under the law to transfer the property. He also submits that if the revenue entries were illegally made without any authority of law, then, such revenue entries cannot be allowed to stand even if it is held that the revenue entries are for fiscal purposes only. His further submission is that the three judgments on which strong reliance has been placed, are distinguishable on facts.

7. Ordinarily, it would be correct to say that the revenue entries are for fiscal purposes and do not decide the question of title, but such entry must have some foundation. In a case where property belongs to one Mr.”C”, one Mr.“A” executes a sale deed in favour of one Mr.”B” and then a revenue entry is made then still the Mamlatdar or other authorities would refuse to interfere.

8. The question of title would be a question relating to the

title to the property. When a sellers sells something then he conveys only those right, title and interest which he has in the property. An absolute stranger if sells property to somebody, then, such purchaser would not acquire any right in the property and on a strength of such sale deed, the purchaser, purchasing from the stranger, would not acquire any right in the property. In the present case, the submission of the original holder, all through had been that the property has been sold by persons who had no authority under the law, therefore, an entry in the revenue records could not be made. In a given case where sale deed is alleged to be executed by the original holder, the original holder comes before the revenue authorities and raises plea of fraud, durace, coercion, undue pressure etc. then the revenue authorities may require him to go to the Civil Court and establish the facts and seek annulment of the document. In such cases, revenue court may not have jurisdiction to enter into the question of title, but in a case where the original holder comes out with a case that the sale deed was not executed by the holder or any person who had no authority under the law, then, the revenue authorities are required to make a limited inquiry that whether the sale

deed was executed by the original holder or by any person under authority of original holder.

9. In the present case, the original holder all through had been submitting that he had cancelled the power of attorney and in view of the said fact, the sale deed was a bogus document. In the opinion of this Court, the revenue authorities had jurisdiction to make an inquiry that whether the sale deed was executed by person competent to execute sale deed in view of the defense that the holder of power of attorney was competent to execute the sale deed.

10. In the present case, the petitioners who have purchased the property, can certainly establish their rights before the Civil Court, Each of them either independently or jointly, having a common cause of action claiming common relief, can file suit/suits seeking a declaration that the sale deed executed by Ranchhodbhai Punabhai Raval under the authority of original holder Nanabhai Prabhudas Bhoi – respondent No.1 herein and the power of attorney dtd.19/4/1983, therefore, they have become owners of the property. Unless, such a declaration is granted in their favour, at this stage it cannot be held that the revenue authorities had no jurisdiction to correct

the wrong.

11. Mr.Kharadi, learned counsel for the respondent No.1 – Nanabhai Prabhudas Bhoi at this stage submitted that Punabhai Dahyabhai Patel (petitioner of Special Civil Application No.8918 of 1999) had already filed a suit for declaration, the same was dismissed and thereafter, the appeal against the said suit has also been dismissed. He, however, admits that each of the petitioner has independent cause of action in their favour, therefore, each of them would be entitled to file a suit seeking a declaration. He submits that if such a suit or suits are filed by the petitioners, then, the present respondent No.1 – Nanabhai Prabhudas Bhoi would not raise question of maintainability of the suit/suits and on a notice from the Competent Court, would always take part in the proceedings.

12. Taking into consideration the totality of the circumstances and that there is a serious dispute relating to authority of Ranchhodbhai Punabhai Raval as holder of power of attorney, I am of the opinion that the petitioners would be entitled to file suit/suits to seek declaration in accordance with law.

13. Both the Special Civil Applications are disposed of with the liberty aforesaid.

14. At this stage, Mr.Patel, learned counsel for the petitioners submit that the respondent No.1 – Nanabhai Prabhudas Bhoi be restrained from alienating the land till final disposal of the suit, because, if any transfer document is executed by the respondent No.1 - Nanabhai Prabhudas Bhoi, the same is likely to complicate the matter.

15. In the opinion of this Court, the petitioners would be entitled to make appropriate prayer in the suit/suits which may be filed, seeking injunction against the respondent that till final disposal of the suit, the respondent No.1 – Nanabhai Prabhudas Bhoi should not transfer or alienate the property, or, create any charge over it. If such an application is filed by the petitioners, then, the same would be decided by the Competent Court in accordance with law after hearing the parties. However, to give breathing time to the petitioners, I restrain the respondent No.1 – Nanabhai Prabhudas Bhoi for a period of one month from today, from transferring

and alienating the property in dispute or creating any charge over it. This order granted by this Court shall lose its efficacy on 7/5/2007.

16.Both the petitions stand disposed of accordingly.

(R.S. GARG, J.)

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